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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES WILLIAMS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0602-CR-143
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jane Magnus-Stinson, Judge
Cause Nos. 49G06-0502-FB-18316 and
49G06-0502-FB-20763

January 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

James Williams appeals the sentence imposed by the trial court after he pleaded guilty to seven felony offenses (one count of robbery as a class B felony; five counts of robbery as class C felonies; and one count of criminal confinement as a class D felony) and being an habitual offender.

We affirm.

ISSUE

Whether the trial court erred in its consideration of aggravating and mitigating circumstances or its order that Williams serve his sentences consecutively.

FACTS

On February 7, 2005, for incidents alleged to have taken place at four separate businesses on February 3rd, 4th, and 5th of 2005, the State charged Williams under Cause Number 49G06-0502-FB-018316 (“#316”) with one count of robbery resulting in bodily injury, a class B felony, and three counts of robbery as class C felonies. The State subsequently added to #316 the allegation that Williams was an habitual offender. On February 10, 2005, for incidents alleged to have taken place on January 13th and 18th, 2005, at another business, the State charged Williams under Cause Number 49G06-0502-FB0920763 (“#763”) with two counts of robbery while armed with a deadly weapon, a class B felony; one count of criminal confinement as a class C felony; two counts of possession of a firearm by a serious violent felon, a class B felony; and two counts of carrying a handgun without a license, a class A misdemeanor. An habitual offender allegation was subsequently added to this information as well.

On November 14, 2005, the morning of Williams' scheduled trial, a plea agreement between Williams and the State as to both #316 and #763 was tendered to the trial court providing as follows. Williams would plead guilty to one count of class B felony for the robbery inflicting bodily injury; he would also plead guilty to the lesser offenses on the other five counts of robbery -- as class C felonies not involving a gun, to criminal confinement as a class D felony, and to being an habitual offender. The State would reduce the five robbery charges to lesser offenses and would dismiss the other charges involving guns. Sentencing would be argued to the trial court.

The trial court conducted a plea hearing on November 14, 2005, and advised Williams of the rights he waived by entering guilty pleas. The trial court also advised Williams that the sentencing range was from six to seventy-four years. After the State specified the facts that its evidence would show, and Williams averred that these facts were true, the trial court found "that for each count, with respect to each victim, a separate factual basis ha[d] been made" and that Williams "was in fact an habitual offender." (Tr. 25, 25-26). The trial court accepted Williams' pleas, found him guilty on the seven counts and of being an habitual offender, and entered judgment.

On January 19, 2006, the trial court held the sentencing hearing. Williams informed the court that he was "sorry" for having been "inconsiderate to [the victims]," that it was a result of his involvement with drugs, and that he "want[ed] to tell everybody [he was] sorry." (Tr. 33, 34, 35). His counsel asked that the trial court consider as mitigating circumstances that Williams was willing to accept responsibility, had not required a jury trial, had a drug problem, and was remorseful.

The trial court stated that it did not “find in mitigation that time and expense were saved because of the fact of the eve of trial plea,” but that his guilty plea was “entitled to some weight” and that the trial court would “afford it weight in mitigation.” (Tr. 39). The trial court noted Williams’ “criminal history, including a 1985 conviction for robbery, 1990 conviction for burglary, [and] 1991 conviction for robbery with a twenty-year sentence,” finding this to constitute a “significant criminal history” that “indicates a pattern of criminal conduct that just hasn’t stopped.” (Tr. 39-40). The trial court acknowledged Williams’ argument about having a drug problem, but observed that the offenses he chose to commit “put people in fear and interrupt[ed] their livelihood, . . . ma[d]e them afraid to work as a clerk.” (Tr. 40). The trial court then concluded that Williams’ criminal history “[wa]s significant aggravation.” *Id.*

Thereafter, the trial court imposed sentences as follows. In #316, Williams was sentenced to ten years for the robbery as a class B felony,¹ to four years for one robbery as a class C felony,² and to four years plus an habitual status enhancement of three years on the other robbery as a class C felony. These sentences were ordered served consecutively, for a total of twenty-five years. In #763, Williams was sentenced to four years each on the two robberies as class C felonies, and to one and one-half years on the

¹ At the time Williams committed the offenses, the presumptive sentence for a class B felony offense was ten years, with the possible sentencing range being from six to twenty years. *See* I.C. § 35-50-2-5

² For a class C felony offense, the presumptive sentence was four years, with the possible sentencing range being from two to eight years. *See* I.C. § 35-50-2-6.

criminal confinement as a class D felony offense.³ These sentences were also ordered served consecutively, for a total of nine and one-half years. Finally, the trial court ordered the sentences in #763 to be served consecutive to the sentences imposed in #316. Thus, Williams was ordered to serve a total aggregate sentence of thirty-four and one-half years.

DECISION

Sentencing decisions rest within the discretion of the trial court, and are reviewed on appeal only for an abuse of discretion. *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Henderson v. State*, 848 N.E.2d 341, 344 (Ind. Ct. App. 2006). When the trial court imposes a sentence other than the presumptive sentence, or imposes consecutive sentences where not required to do so by statute, the appellate court examines the record to insure that the trial court explained its reasons for selecting the sentence it imposed. *Lander v. State*, 762 N.E.2d 1208, 1215 (Ind. 2002). The trial court's statement of reasons must include the following components: (1) identification of all significant aggravating and mitigating circumstances; (2) the specific facts and reasons that lead the court to find the existence of each such circumstance; and (3) an articulation demonstrating that the mitigating and aggravating circumstances have been evaluated and balanced in determining the

³ On a class D felony offense, the presumptive sentence was one and one-half years, with the sentencing range being from one to three years. *See* I.C. § 35-50-2-7.

sentence. *Id.* In our review, we give great deference to the trial court’s determination of the proper weight to assign to aggravating and mitigating circumstances, and the appropriateness of a sentence. *Losch v. State*, 834 N.E.2d 1012, 1214 (Ind. 2005).

Williams first argues that the trial court erred in sentencing him because “there were mitigating factors the Court did not consider,” and “overlooked significant mitigating circumstances.” Williams’ Br. at 6, 12. He specifies his remorse, his confession and acceptance of responsibility for the crimes, and drug use.⁴

The trial court is not obligated to weigh or credit facts proffered as mitigating by the defendant in the way that the defendant suggests they should be weighed or credited. *Abel v. State*, 773 N.E.2d 276, 380 (Ind. 2002). Williams argued for the trial court to find his remorse and his drug use mitigating factors. The trial court did not accept Williams’ statement of remorse as being a significant mitigator. The weight to be given a defendant’s expression of remorse is a credibility determination left to the trial court. *See Stout v. State*, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005). Williams suggests that the trial court erroneously used his drug problem as an aggravating factor. We read the trial court’s statement as its explanation of why it did not find persuasive Williams’ argument that his drug usage should be a mitigating circumstance. Thus, the trial court concluded that neither Williams’ proffered remorse nor his drug usage excuse were significant

⁴ Williams also cites his “willingness to make restitution to the victim of the crime for the injury, damage and loss.” Williams’ Br. 7. He does not cite to the record in this regard. *See* Ind. Appellate Rule 46(A). Williams did state to the trial court that he would pay for “medical bills” incurred by the victim that he injured, but he made no such offer with respect to the other crimes and victims. (Tr. 34).

In addition, Williams claims that the trial court erroneously overlooked his alcoholism. At trial, neither Williams nor his counsel mentioned alcoholism at the sentencing hearing; they only asserted that he had a drug problem.

mitigating circumstances. This conclusion by the trial court was not an abuse of its discretion. *See Lander*, 762 N.E.2d at 1215.

Our Supreme Court has held that a guilty plea is not automatically a significant mitigating factor. *See Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). However, a guilty plea “is a mitigating factor entitled to some weight.” *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005). The trial court expressly indicated that it did afford some weight to William’s guilty pleas. Further, whether the defendant’s guilty plea is a “significant mitigating factor” turns on whether the defendant pleading guilty actually obtained a benefit from pleading guilty and whether the plea constituted a substantial benefit to the State. *Id.* Here, five of the charges against Williams were reduced to lesser offenses, and four charges were dismissed. Further, as the State argued to the trial court, Williams “didn’t take responsibility until the morning of trial,” which “didn’t save the State or the Court much time or expense.” (Tr. 29). The trial court did not abuse its discretion by not finding Williams’ guilty pleas to be significant mitigating circumstances.

The trial court considered the circumstances argued by Williams. It afforded some weight to the fact that Williams pleaded guilty. The trial court also found that Williams’ criminal history was a significant aggravating circumstance. Williams does not challenge this conclusion or that such a criminal history is an aggravating circumstance that may warrant imposition of consecutive sentences. *See Bryant v. State*, 841 N.E.2d 1154, 1158 (Ind. 2006). The “significant aggravation” of Williams’ criminal history, weighed against “some weight” given by the trial court to his guilty pleas, led the trial court to find that the aggravating circumstance outweighed the mitigating one. (Tr. 40, 39). Thus, the

trial court “explained its reasons for selecting the sentence it imposed,” *Lander*, 762 N.E.2d at 1215, and we do not find that the trial court abused its discretion when it imposed the presumptive sentences for the individual offenses committed and then ordered that Williams serve the sentences consecutively.

Affirmed.

BAKER, J., and ROBB, J., concur.